

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

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MARJORIE FERRELL, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	No. C-1-01-447
	)	
v.	)	Judge Sandra S. Beckwith
	)	
WYETH-AYERST LABORATORIES, INC., <i>et al.</i> ,	)	Magistrate Judge Timothy S. Hogan
	)	
Defendants.	)	

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**PLAINTIFFS' MOTION  
TO SUSPEND THE NOTICE DEADLINE PENDING THE COURT'S RULING  
ON PLAINTIFFS' MOTION FOR VOLUNTARY DISMISSAL  
WITH PREJUDICE**

Plaintiffs, though the undersigned counsel, hereby move this Court for an Order to suspend the June 1, 2006 notice deadline set forth in Magistrate Judge Hogan's Calendar Order dated January 5, 2006, pending the Court's ruling on Plaintiff's Motion for Voluntary Dismissal With Prejudice. Plaintiffs' motion is based on all files and records in this case, including the memorandum filed herewith, and any arguments of counsel requested by the Court.

Dated: May 4, 2006

Respectfully submitted,

/s/ Patrick E. Cafferty  
One of Plaintiffs' attorneys

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**PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION  
TO SUSPEND THE NOTICE DEADLINE PENDING THE COURT'S RULING  
ON PLAINTIFFS' MOTION FOR VOLUNTARY DISMISSAL  
WITH PREJUDICE**

**INTRODUCTION**

On January 5, 2006, Magistrate Judge Hogan issued a Calendar Order setting forth certain case management deadlines, including a June 1, 2006 deadline for notice. For the reasons set forth in Plaintiffs' contemporaneously-filed Motion for Voluntary Dismissal with Prejudice, Plaintiffs United Food & Commercial Workers Midwest Health Benefits Fund, and Twin Cities Bakery Workers Health & Welfare Fund, Marjorie Ferrell, Mary D. Duda and Mary Seaworth move to dismiss their claims with prejudice and without costs to either party, and the resulting decertification the subclasses ("Motion for Voluntary Dismissal"). Since the briefing applicable to the Motion for Voluntary Dismissal will likely not be completed until after the June 1, 2006 notice deadline<sup>1</sup>, and

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<sup>1</sup> See S.D. Ohio Civ. R. 7.2(a)(2) which provides twenty-one (21) days to file a response brief and another eleven (11) days for filing the reply.

since the Court's Order on that motion may render the notice deadline moot, Plaintiffs seek a suspension of that deadline pending the Court's determination on the Motion for Voluntary Dismissal.<sup>2</sup>

### **ARGUMENT**

Federal Rule of Civil Procedure 23(d) states, in part, that the Court may make appropriate orders in the conduct of actions, including issuing orders which determine the course of proceedings or deal with similar procedural matters. See Fed. R. Civ. P. 23(d)(1) and (5). In this case, an order suspending the June 1, 2006 notice deadline is wholly appropriate, as the notice deadline may well be rendered moot by the voluntary dismissal of this action.

Moreover, disseminating notice at this stage would be confusing to the Class, especially in light of Plaintiffs' pending Motion for Voluntary Dismissal. Finally, because trial is currently scheduled for January 2007, there remains plenty of time to accomplish notice, if necessary.

### **CONCLUSION**

For the reasons set forth above, Plaintiffs respectfully request that the Court suspend the June 1, 2006 notice deadline pending the Court's determination on Plaintiffs' separate Motion for Voluntary Dismissal.

Dated: May 4, 2006

Respectfully submitted,

/s/ Patrick E. Cafferty  
One of Plaintiffs' attorneys

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<sup>2</sup> As directed by Local Civil Rule 7.3(a), Plaintiffs contacted counsel for Defendants and solicited their consent to suspend this deadline pending the Court's decision on voluntary dismissal. Defendants do not consent to an extension.

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**CERTIFICATE OF SERVICE**

I hereby certify that I caused to be electronically filed the foregoing pleading with the Clerk of the Court using the CM/EFC system which will send notification of such filing to the following:

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Dated: May 4, 2006

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